IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 5828 of 2003
Date of Decision: 28.3.2007

Amrik Singh and others ...Appellants

Versus

Rawel Singh and others ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Naresh Prabhakar, Advocate, for the appellants.

Shri G.S. Nagra, Advocate, for respondent No.1.

HEMANT GUPTA, J.

The defendants are in second appeal aggrieved against the judgment and decree passed by the learned first Appellate Court, whereby the suit for joint possession of land measuring 1 kanal, was decreed.

One Shangara Singh was the owner of the suit land. The land measuring 1 kanal vide sale deed dated 15.6.1995 was sold by him to the plaintiff-respondent. The said Shangara Singh also sold 2 kanals 8 marlas of land to the defendant-appellants on 18.9.1995. It was the case of the plaintiff that the said sale is in excess of share of Shangara Singh to the extent of 1 kanal. In view of the fact that Shangara Singh has effected various sales in favour of different persons, the learned trial Court found that the question whether land in excess of 1 kanal has been sold by Shangara Singh, is not required to be gone into in the present suit and consequently dismissed the suit for joint possession. However, the learned

first Appellate Court decreed the suit for joint possession in appeal.

The learned first Appellate Court found that Shangara Singh was owner to the extent of 1/3rd share of the land measuring 18 kanals 17 marlas and 1/3rd share in land measuring 39 kanals 7 marlas. It was, thus, found that the sale in favour of the plaintiff and the defendants is a sale of share of the total land of Shangara Singh and, therefore, it cannot be said that Shangara Singh sold 1 kanal of land in excess of his share in the joint land. It also found that the statement of the plaintiff that he is in exclusive possession of the land purchased, is erroneous as the sale in his favour is only a sale of a share and thus, he is entitled to a decree for joint possession.

Keeping in view the fact that the parties have purchased share of the land from Shangara Singh, therefore, the parties are co-sharers. The finding recorded by the learned first Appellate Court that the plaintiff is entitled to decree for joint possession cannot be said to be suffering from any illegality as the effect of such decree is only to entitle the plaintiff to seek symbolic joint possession of the suit land. Under a decree for joint possession, the plaintiff cannot claim exclusive possession of any portion of the joint land. Said proposition is not even disputed by the learned counsel for the respondent-plaintiff. The only remedy of the parties is to seek partition of the joint land.

With the said observation, the present Regular Second Appeal stands dismissed as the findings recorded do not raise any substantial question of law.

28-03-2007 (HEMANT GUPTA)
ds JUDGE